

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Judgment Reserved on : 12.09.2017

Judgment Pronounced on : 12.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.No.466 of 2007

and

C.M.P.No.1 of 2007

Shanmuga Santhavalli

...Appellant/Plaintiff

Vs.

1.Kannammal @ Krishnammal

...R1/Defendant No.1

2.Jayapal

M/s.Solo Porcessing Mill,
Ammapettai, Bhavani Tk,
Erode District.

...Respondents/Defendant No.1

This second appeal has been filed under Section 100 of CPC, against the judgment and decree dated 12.01.2007 made in A.S.No.40 of 2006 passed by the learned Additional District Judge(Fast Track Court No.IV) Bhavani partly modifying the Judgment and decree dated 01.07.2005 passed by the learned Principal District Munsif Court, Bhavani in O.S.No.837 of 2004.

For Appellant : Mr.N.Manoharan

For Respondents : No Appearance

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 12.01.2007 made in A.S.No.40 of 2006 passed by the learned Additional District Judge(Fast Track Court No.IV) Bhavani partly modifying the Judgment and decree dated 01.07.2005 passed by the learned Principal District Munsif Court, Bhavani in O.S.No.837 of 2004.

2. Brief facts of the plaintiff case is as follows:-

The suit property originally belonged to the first defendant

as per the Will dated 03.07.1961. The first defendant then executed a settlement deed in favour of the plaintiff on 16.09.1999. The plaintiff is residing at Rasipuram and used to come to the suit property for cultivation. Taking advantage of the same, the first defendant attempted to encumber the suit property. Hence, the plaintiff was constrained to lodge a complaint to the police. Subsequently, the first defendant cancelled the settlement deed on 01.07.2004. The said fact came to the knowledge of the plaintiff latter only. Subsequently, on 28.09.2004, the defendants attempted to enter into the suit property. Thus the plaintiff was constrained to file the suit for declaration and injunction.

3. On the other hand, disputing the claim of the plaintiff, it is contended by the defendants that the first defendant never executed any settlement deed in favour of the plaintiff. On the contrary as the plaintiff insisted the first defendant to execute Will with regard to the suit property in Survey No.16/1 and 16/2. The first defendant accepted the same, signed as demanded by the plaintiff. However, without read over the contents of documents to the first defendant, they have prepared and registered the settlement deed instead of Will. The above said settlement deed was obtained by fraud and misrepresentation. Hence, after coming to know the said fact, the first defendant cancelled the settlement deed on 01.07.2004. As such, there is no cause of action for the plaintiff against the defendants. Therefore, the suit is not maintainable and the same has to be dismissed.

4. After contest, the trial Court decreed the suit as prayed for. Aggrieved upon that the same, the defendants preferred the first appeal before the lower appellate Court. On re-appreciate of the evidence, the lower appellate Court partly allowed the appeal by modifying the decree and judgment with regard to house property bearing Door No.176/1 and dismissed the suit with regard to the property in re-survey No.16/1 and 16/2. Hence, the plaintiff has now come forward with the second appeal opposing the conclusion of the first appellate Court.

5. At the time of admission, the following substantial question of law was framed by this Court for consideration.

a) Whether the findings of the first appellate court is correct in law in modifying the decree granted by the trial court to exclude the R.S.No.17/3 for the reason that it has not been specifically mentioned in the settlement deed/Ex.A.2, particularly when there is no dispute with regard to the extent and the boundaries given in Ex.A.2?

b) Whether the plaintiff is entitled to get a decree for declaration and permanent injunction on the basis of the settlement deed/Ex.A.2, because the subsequent cancellation of the settlement deed under Ex.B.2 is in violation of section 122 and 126 of the Transfer of Property Act?

6.The learned counsel appearing for the appellant would submit that once the property was settled by the first defendant in favour of the plaintiff, the first defendant has no locus standi to cancel the settlement deed. It has to be done only through Court of law. The execution of cancellation deed itself is invalid under Section 126 of the Transfer of Property Act. Further more, in the settlement deed, the first defendant has described the property with four boundaries. Within the said four boundaries, the house property bearing Door No.176/1 is situated. So the intention of the settlor is conclusive proof. However, without any basis, the first appellate Court modified the decree and judgment of the trial Court with regard to the house property, which is against law. On the side of the appellant, number of ruling on the point that the boundary will prevail over the extent and survey number is relied upon and they sought to entertain this second appeal.

7.Per contra, the learned counsel appearing for the respondents would submit that the first appellate Court after considering both oral and documentary evidence came to the correct conclusion and there is no infirmity in it. Hence, the respondent prays that the appeal is to be dismissed.

8.I have heard the rival submissions and also perused the materials available on record.

9.On perusal, it is clear that the first defendant has executed a settlement deed in favour of the plaintiff through Ex.A2. Whether it can be cancelled by another instrument is to be analysed. As per the following decision of this court which is reported in 2003 (1) MADRAS LAW WEEKLY 605, once a gift deed is accepted and in the absence of power of revocation, the settlement cannot be revoked as provided under Section 126 of the Transfer of Property Act. Then once the settlement deed is accepted by the settlee, then the settlement is completed. In the absence of power of revocation reserved for the settler, the gift deed cannot be revoked. It is admissible for the Court to draw inference the permission of acceptance from the conduct of the parties and from the factual materials. As per the Karnataka High Court decision reported in ILR 1987 KARNATAKA 3892, the registered gift deed cannot be unilaterally cancelled by another registered deed and the remedy is to file the suit seeking cancellation of the gift deed. As per the old verdict

of this Court which is reported in 1936 MLJ 118, the gift once validly made cannot be revoked at the mere Will of the donor. As per Section 126 of the Transfer of Property Act, the gift cannot be revoked. As per settled legal position, the first defendant has no right to cancel the settlement deed made in favour of the plaintiff and the same cannot be revoked. In Ex.A2 settlement deed itself there is a specific recital "இந்த தான் செட்டில்மெண்ட் பத்திரத்தில் கண்டுள்ள சொத்துக்களை இனி நான் எக்காலத்திலும் எக்காரணத்தைக் கொண்டும் ரத்தோ, மாற்றமோ, புதுபிக்கவோ செய்வதில்லை. அவ்வாறு நான் பின்னால் ஏதாவது செய்தாலும், ஆது எக்காரணத்தைக் கொண்டும் செல்லத்தக்கதல்ல. The first defendant herself made a declaration in the settlement deed itself that she has no right to alter or change or cancel the settlement deed. If really, there is a grievance for the first defendant, she has to seek the remedy known to law and she cannot cancel the settlement deed by mere execution of another registered deed. Hence, Ex.B2, the cancellation deed itself will not bind upon the plaintiff.

10.The next contention is with regard to house property bearing Door No.176/1, which is part and parcel of Re-survey No.16/2 of the settlement deed Ex.B2. In the additional written statement, the first defendant had stated that in case the Court comes to the conclusion that the settlement deed is valid, she never settled the house property in favour of the plaintiff. Before going in to the discussion, we have to analyse the description of property narrated in the settlement deed. In Ex.A2 settlement deed, the description of property runs as follows:-

"The suit property in two survey numbers, i.e., RS.No.16/1 and 16/2. As two portions, the first portion bounded on the north by land of M/s.Solo Need Process Private Limited; East by Bhavani - Mettur Road; South by Land of Manickam and West by land of Rangammal. The second portion bounded on the north by land of Rangammal; East by Bhavani - Turret Road; South by land of Sundaram and West by land of M/s.Solo Neet Process Private Limited."

The above said land totally measured to an extent of 2 acres 39-1/4 cents. It has also been stated that as in R.S.No.16/2, a well in which half right is given and in the motor also half right is given, but no where, in Ex.B2 cancellation deed she has whispered anything about the house property. If really the settlor excluded the house property from the settlement deed, necessarily she has to mention the same as stated about the well. As such she is not entitled to separate the house property which is part and parcel of RS.No.16/1 and 16/2. Hence, the

trial Court has correctly concluded that the settlement deed includes the house property bearing Door No.176/1, but the first appellate Court came to the conclusion that there is no specific averment in the Ex.A2 settlement deed with regard to house property and therefore the house is not included in the settlement deed. For the reasons stated above, the conclusion of the first appellate Court is not proper and the same cannot be sustained. Further, the intention of the settlor has to be considered. The entire document has to be read in toto and on the basis of the entire document alone, the intention of the settlor has to be inferred. The settlor herself specifically narrated half right in the well and half right in the motor but she has not whispered anything about the house situated within the above said four boundaries. If really she was not interested to settle the house property in favour of the plaintiff, she would have very well mentioned about the same in the deed itself or at least in the schedule of property itself, but she has not done so. Apparently within the four boundaries mentioned in the settlement deed only the house property is situated. It is evident from the averments in Ex.A1 that the intention of the settlor is to give the entire Survey No.16/1 and 16/2 to the plaintiff.

11.In this aspect, the learned counsel appearing for the appellant relied on decisions reported in 2016 (2) CTC 77 in N.VALLIAMMAL (DEAD), 2.N.NAGALINGAM Vs. M.KANNIAH AND OTHERS; 2016(1) MWN CIVIL 152 in NATARAJAN Vs. SATHIYAVANI; 2013(1) MWN CIVIL 206 in S.LAKSHMI AND OTHERS Vs. M.TAMILSELVI AND OTHERS; 2011(1) CTC 663 in A.CHANDRAN AND ANOTHER Vs. PERIYAMMAL; 2004 (5) CTC 344 in KUPPUSWAMI NAIDU Vs. KRISHNASAMI NAIDU and 2011 (1) MWN CIVIL 85 in SAMAYANA THEVER Vs. ABDUL RAZACK AND ANOTHER. Except the Apex Court verdict which is reported in 2006 (5) CTC 180, all other citations of this Court are not relevant to the fact of this case since there is no discrepancy with regard to the measurements. In the Apex Court verdict, the law laid down is that even if there was a discrepancy, the boundaries with prevail. Thus relying on the above said Apex Court verdict in 2006 (5) CTC 180, the first defendant has stated in the additional written statement that if the Courts come to the conclusion that the settlement deed is valid, the house property mentioned in the settlement deed cannot be included in the settlement. The first defendant has not stated anything in Ex.A2 settlement deed with regard to house property bearing Door No.176/1. The first defendant specifically stated about the common well and common motor. At this juncture, if really she was not interested to give the house property to the settlee, certainly she would have mentioned about the house property, stated that house property is not included in the settlement, but she has not done so. Now, only an after thought and defence for the suit, she has come forward with the plea of

exclusion of house property from the settlement deed. If really, she is interested, she can very well seek remedy through Court of law to cancel the settlement deed itself, but she has not done so. In such situation, the findings of the first appellate Court with regard to the house property, separating the same from the settlement deed Ex.A2 is unwarranted. Hence, the interference of this Court is necessitated. Therefore, this Court comes to a conclusion that the trial Court has elaborately discussed both the oral and documentary evidence and analysed the entire materials on record and arrived at the conclusion on the basis of the intention of settlor. Hence, the findings of the lower appellate Court is to be set aside and findings of the trial Court has to be restored.

12.For the above said reasons, the substantial question of law is answered in favour of the appellant and the second appeal is to be allowed by setting aside the Judgment and decree of the first appellate Court.

13. In the result, the second appeal is allowed. No costs. The Judgment and decree dated 12.01.2007 made in A.S.No.40 of 2006 passed by the learned Additional District Judge(Fast Track Court No.IV), Bhavani is hereby set aside and the decree and judgment of the trial Court is restored. Consequently, connected C.M.P. is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Fast Track Court No.IV,
Bhavani,

2.The Principal District Munsif Court,
Bhavani.

3.The Section Officer,
VR Section, High Court,
Madras.(2Copies)

+1cc to Mr.N.Manokaran, Advocate, S.R.No.36808

S.A.No.466 of 2007

EV(CO)
GSP(02/01/2019)